that the trial judge "erred in law in failing entirely to consider the omission of the respondents to adduce any evidence whatsoever that the payment by them on behalf of their insured was justified under the provisions of the Workmen's Compensation Act." The decision in *County Council of Galway* v. *The County of Galway Board of Health and Public Assistance*[1] is cited in support of this submission. In this Irish case, Meredith J. had to construe subsection 2 of section 6 of the Workmen's Compensation Act, 1906 which is substantially in terms with section 20(b) of our Workmen's Compensation Act (Cap. 130). Meredith J. held that the right to be indemnified conferred by the subsection was subject to the concluding words, "and all questions as to the right to and amount of any such indemnity may, in default of agreement, be settled by action or by consent of the parties, by arbitration"; that these words qualify the employer's title to be indemnified; that the first part of the subsection was merely intended to give the employer a right over against the stranger in respect of his original liability to the workmen; and that questions as to the right to, and the amount of, the indemnity are left open and at large for settlement, if necessary by action. Meredith J. went on to add that the right conferred by the subsection "was limited to the amount which the workman might have recovered as damages had he brought his action against the defendants".

Although counsel for the appellants has not put it so clearly, his submission really is that as the respondents in this case did not tender any evidence at the trial to show that in a claim at common law, made on behalf of the deceased, a sum of $11,160 could have been recovered as damages, the trial judge should have dismissed the respondents' claim for want of evidence. It is true that in his judgment the trial judge has not dealt with this aspect of the case although submissions on this issue were made by both counsel. There is however evidence on record which shows that the claim before the Commissioner for Workmen's Compensation was a dependency claim made on behalf of the widow of the deceased; that the average monthly earnings of the deceased at the time of his death were $155 per mensem; that the Commissioner for Labour made a claim on behalf of the widow under section 8(2) of the Workmen's Compensation Act for a lump sum payment of 72 months wages amounting to $11,160 and that this claim was accepted by the deceased's employers and by the respondents as their insurers. In our opinion this was sufficient evidence to shift the burden of proof on the appellants. It was open to the appellants to show by evidence at the trial that in a common law action, the widow of the deceased, could not have recovered as much as $11,160 as damages in a dependency claim. This they failed to do and therefore have only themselves to blame.

In our judgment the trial judge came to a right decision in allowing the claim of the respondents and entering judgment for $11,160 against the appellants. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Chan, Goh & Co.; S.K. Lee & Co.*

MALAYSIAN REPORTS

KEK KEE LENG v. TERESA BONG NGUK CHIN & ANOR.

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat F.J. and Seah J.) August 20, 1977]

[Kuching — Federal Court Civil Appeal No. 111 of 1976]

Tort — Accident — Negligence — Contributory negligence — Vicarious liability — Whether driver agent of owner of vehicle — Damages.

Damages — Leg — Lower limb.

This was an appeal against the decision in the High Court where it had been held that both the appellant, the rider of the motor scooter and the second respondent, the driver of the motor car were blameworthy for the accident which had occurred in the proportion of one third to the appellant and two-thirds to the respondent. The learned judge also dismissed the action against the first respondent, the owner of the motor car, who was the wife of the driver, the second respondent, on the ground that the second respondent was not driving as her agent at the material time. The appellant appealed to the Federal Court.

Held: (1) on the facts as well as the findings of the court, the learned judge should have held that the accident was caused solely by the negligence of the second respondent and that the appellant was in no way to be blamed for the collision. Having regard to the specific findings of the learned judge, the appellant could not reasonably have avoided the consequences of the second respondent's negligence in turning from a side road into a main road without stopping at the junction;

(2) it was not correct for the learned judge to decide on the question of agency without hearing the owner of the motor car unless her absence could be accounted for. In the absence of evidence the learned judge should have ruled that the presumption that the driver of the car was driving as the servant or agent of the owner applied;

(3) the sum of $3,705 which had been advanced by the employers of the appellant should form part of the special damages for loss of earnings and the sum when received from the respondents should be returned to the employers;

(4) the sum of $5,000 awarded for general damages was within the figure commonly awarded to similar injuries of the lower limb of the leg and should not be disturbed.

Cases referred to:-

(1) *Cass* v. *Edinburgh Tramways* [1909] A.C. 1068.
(2) *Glasgow Corporation* v. *Taylor* [1922] 1 A.C. 44.
(3) *Kerry* v. *Carter* [1969] 1 W.L.R. 1372, 1376; [1969] 3 All E.R. 723 at p. 726.
(4) *Sepang Omnibus Sdn. Bhd.* v. *Christina Loh Soo Pang & Ors.* [1970] 2 M.L.J. 234.
(5) *Tan Chow Soo* v. *Ratna Ammal* [1969] 2 M.L.J. 49
(6) *Caswell* v. *Powell Duffryn Associated Collieries* [1940] A.C. 152, 186.
(7) *R.* v. *Southern Canada Power Ry.* [1937] 3 All E.R. 923, 930.
(8) *Nanee* v. *British Columbia Electric Co.* [1951] A.C. 601, 611.
(9) *Hewitt* v. *Bonvin* [1940] 1 K.B. 188, 194-195.
(10) *Rambarran* v. *Gurrucharan* [1970] 1 W.L.R. 556; [1970] 1 All E.R. 749.
(11) *Launchbury* v. *Morgans* [1972] 2 W.L.R. 1217; [1972] 2 All E.R. 606.
(12) *Dennis* v. *London Passenger Transport Board* [1948] 1 All E.R. 779.
(13) *Flint* v. *Lovell* [1935] 1 K.B. 354.
(14) *Davies* v. *Powell Duffryn Associated Collieries* [1942] A.C. 601, 616-617.

FEDERAL COURT.

Lee Chuan Eng for the appellant.

John W.S. Ko for the respondents.

Chang Min Tat F.J. (read by Lee Hun Hoe C.J. (Borneo)): I agree that the appeal should be allowed to the extent indicated in the judgment of Seah J.

I would only add that in the finding of the learned trial judge that the motorist turned from a side road, which is the exit road from the new General Hospital in Kuching, into the main Jalan Tun Haji Openg along which the motor-scooterist was approaching when the latter was only 60 feet from the junction, there could be no circumstances in which the scooterist could be held to be blamed, even partially, for the accident. The distance was too short for the scooterist to stop, if he was travelling at a speed of 30 m.p.h. The learned judge found somewhat imprecisely that his speed was more than 25 m.p.h. which the scooterist said he was making against the testimony of the motorist that he was travelling fast. Though he tried to swerve to the right (there could be no denial that he did so, since he ended on the other side of the road), he could not be blamed if he did not avoid the accident. He was also blamed for not sounding his horn, but in the circumstances, sounding the horn was an exercise in futility, when the motorist had committed himself to a course which constituted an inevitable obstacle in his path.

It would appear that the scooterist was partially blamed because he did not anticipate from the presence of the motorist on the side road that the latter would turn into the main road. The expectation one needs to expect from another present on the road must be related to the age and understanding of the other. If he was a child, then perhaps, the scooterist should remember that "the same amount of caution is not to be expected ... as is expected of an older person, nor the same knowledge of the danger of doing things": *Cass* v. *Edinburgh Tramways*[1] and also the dictum of Lord Sumner in *Glasgow Corporation* v. *Taylor*[2] at page 67 that

"Where a question as to the care to be used arises between persons using as of right the place where they respectively act, infancy is... but a measure of care appropriate to the inability or disability of those who are immature or feeble in mind or body... due from others who know or ought to anticipate the presence of such persons within the scope and hazard of their own operations."

But the case under appeal is not a case concerning an infant or a person under disability. He is an adult, licensed to drive and therefore presumably he has acquired a knowledge not only of the Highway Code but also of the ordinary precautions to be taken by him for his own safety as well as for the safety of others. If he obtrudes himself on to the main road in circumstances which make it impossible for traffic coming behind him to avoid a collision, then I do not, with respect, think there can be any doubt as to his entire responsibility for the accident.

Seah J.: This is an appeal by the plaintiff from a judgment of Charles Ho J. in which the learned judge held both the rider of motor scooter No. KA9648, the plaintiff, and the driver of motor-car No. KA222, the 2nd defendant blameworthy for the accident in the proportions of one-third to the plaintiff and two-thirds to the 2nd defendant respectively and awarded damages accordingly. At the same time, the learned judge dismissed the action against the 1st defendant, the registered owner of the motor-car on the ground that the 2nd defendant was not driving it as her agent at the material time.

As this is an appeal against apportionment of liability for contributory negligence, I think it is useful to remember the principles to be applied. This has been succinctly stated by Lord Denning M.R. in *Kerry* v. *Carter*[3] at page 1376:

"We have been referred to cases on this subject, particularly in the recent case of *Brown* v. *Thompson* [1968] 1 W.L.R. 1003. Since that case it seems to have been assumed in some quarters that this court will rarely, if ever, alter an apportionment made by the judge. Such is a misreading of that case. I think that the attitude of this court was correctly stated in that case at page 1012 by Edmund Davies L.J., when he quoted from the judgment of Sellers L.J., in *Quintas* v. *National Smelting Board* [1961] 1 W.L.R. 401 at page 409. This court adopts in regard to apportionment the same attitude as it does to damages. We will interfere if the judge has gone wrong in principle or is shown to have misapprehended the facts: but, even if neither of these is shown, we will interfere if we are of opinion that the judge was clearly wrong. After all, the function of this court is to be a Court of Appeal. We are here to put right that which has gone wrong."

This dictum of Lord Denning M.R. had been applied by the late Ong C.J. in the Federal Court case of *The Sepang Omnibus Sdn. Bhd.* v. *Christina Loh Soo Pang & Ors.*[4]

Before the trial judge the following facts were admitted:

That on the day of the accident, the plaintiff was the owner and rider of the motor scooter; the 1st defendant was the owner of the motor-car and the 2nd defendant its driver. Traffic was not very heavy at the relevant time. The road condition was dry, the weather fine and visibility was good.

That the place of the accident was just next to the entrance to the new Sarawak General Hospital, Kuching. Facing Kuching on the left side of the road, there were two entrances and one exit. The first lane was the entrance to the new hospital; the second was the entrance to the old hospital and the third was the exit from the old hospital.

That the plaintiff was travelling down to Kuching from the airport while the 2nd defendant was coming out from the entrance leading to the new hospital. The time of the accident was 1.50 p.m.

Having considered the judgment, it is plain that the learned judge did not accept both the plaintiff's and the 2nd defendant's stories completely. The learned judge, however, did make the following findings:

(a) that the motor-car after stopping at the junction, started to turn into the main road when the motor scooter was about 60 feet away from the junction;

(b) that the collision occurred somewhere near the place marked "Y" on the sketched plan and before the motor-car had completed the turn fully;

(c) that the plaintiff was in a hurry to go to the bank to deposit the sum of $1070 which he was carrying and he was travelling at a speed of more than 25 miles per hour;

(d) that the plaintiff had seen the car coming out from the side road when he was about 60 to 70 feet away from the entrance but he did not slow down or give any warning of his approach.

Sitting in the Federal Court, all I can depend on is the written record of the evidence previously given. On the other hand, the learned judge had the advantage of observing and hearing the oral testimonies of the plaintiff and the 2nd defendant given before him. In the circumstances, my duty is that which has been defined by the Privy Council in various cases and most recently in *Tan Chow Soo* v. *Ratna Ammal*.[5] I do not think that I need read any part of that case. Applying that principle here, I do not think it justified for an appellate court to reverse the findings of the trial judge if there was some evidence to support them.

On the question of apportionment of liability, the only point for decision by this court is whether there should be a finding of contributory negligence against the plaintiff. It was, however, contended by counsel for the plaintiff that on the evidence adduced as well as the findings of the learned judge, the trial court should have held that the negligent driving of the 2nd defendant of the motor-car was the sole cause of the accident.

In considering whether the plaintiff was guilty of contributory negligence, the learned judge said:

"In the present case, the plaintiff was travelling at a fast speed; he failed to reduce his speed or sound his horn when he saw the second defendant moving out from the side road when he was about 60 feet away from its entrance; no evidence that he took any other steps to avoid the collision. In these circumstances, I am of the opinion that he had failed to take reasonable care of himself and he was therefore guilty of contributory negligence."

Contributory negligence is an expression meaning "negligence materially contributing to the injury" (see Lord Porter in *Caswell* v. *Powell Duffryn Associated Collieries*[6]), the word "contributory" being regarded "as expressing something which is a direct cause of the accident" (see judgment of Lord Maugham in *R.* v. *Southern Canada Power Co.*[7]). However, the word "negligence" is not used in its usual meaning. Negligence ordinarily means breach of a legal duty to take care, but as used in the expression "contributory negligence" it does not mean breach of duty. It means the failure by a person to use reasonable care for the safety of himself or his property so that he becomes the author of his own wrong. More recently, Lord Simon in giving the judgment of the Privy Council in *Nance* v. *British Columbia Electric Ry*[8] said at page 611:

"When contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued, and all that is necessary to establish such a defence is to prove... that the injured party did not in his own interest take reasonable care of himself and contributed, by his want of care, to his own injury. For when contributory negligence is set up as a shield against the obligation to satisfy the whole of the plaintiff's claim, the principle involved is that, where a man is part author of his own injury, he cannot call on the other party to compensate him in full."

In short, the question in this case depends entirely on whether the plaintiff could reasonably have avoided the consequences of the 2nd defendant's negligence having regard to the specific findings of the learned judge.

Firstly, as regards the speed of the motor scooter. The learned judge found that the plaintiff was riding at more than 25 miles an hour immediately prior to the collision. Since the learned judge did not state the exact or approximate speed, I think I am entitled to assume the plaintiff had not exceeded the speed limit of 30 miles per hour. As it was admitted that the traffic was not very heavy at the relevant time, riding at a speed less than the maximum allowed would not, in my opinion, be considered excessive in the circumstances.

Secondly, with regard to the question of failure to reduce the speed, sound the horn or taking steps to avert the collision, all these acts, in my view, would depend on how close the plaintiff was to the 2nd defendant's motor-car when the latter emerged suddenly from the side road onto the main road. It seems to me that no useful purpose would be served in sounding the horn to attract the attention of the 2nd defendant as the latter's motor-car had already started to come out onto the main road from the side road. What about if the plaintiff had slowed down to say 20 miles an hour? According to the Conversion Table, if a motorist is travelling at 20 miles an hour, he would be covering a distance of about 29 feet per second and applying this to this case, it would take about two seconds for the plaintiff's motor scooter to come into contact with the 2nd defendants' motor-car assuming that the plaintiff acted quickly. Speaking generally, when one is faced with an impending danger, one does not normally act immediately. The court should give some allowance for this. During these vital seconds, the plaintiff would be closing in fast onto the motor-car. It seems to me that the plaintiff would not be able to avert the collision even if he had slowed down to 20 miles an hour. What would be the result if the plaintiff had applied his brake? Taking into account the Table of Braking Distances, it would appear that travelling at a speed of 30 miles an hour, the overall stopping distance would be in the region of 75 feet. Even if the plaintiff had forcibly applied his brake, it is plain that he could not have avoided colliding with the 2nd defendant's motor-car. Should the plaintiff swerve to his right on to the path of oncoming traffic? Or should he swerve to his left? There was no evidence that by swerving either to his left or right, the plaintiff could have avoided the collision or that it would be safe for him to do so.

In the light of the above, it is quite plain that the plaintiff could not have reasonably averted the collision. In other words, the plaintiff just did not have the time to take reasonable steps to avoid the impact. Instead of emerging from the side road onto the main road when the plaintiff was approaching at a distance between 60 and 70 feet away, the 2nd defendant should have waited a little bit longer. When coming out

from a side road onto a main road, the 2nd defendant should select such a moment as would allow him to enter the main road with safety. This the 2nd defendant had failed to do. On the facts as well as the findings of the court, the learned judge should have held that the accident was caused solely by the negligence of the 2nd defendant and that the plaintiff was in no way to be blamed for the collision.

As a matter of practice, accidents could have been frequently avoided by the timely sounding of the horn, by careful steering, stopping or even reducing the speed. However, if a motorist suddenly emerges from a minor road onto the main road without warning and places another cyclist along the main road in a position of impending danger in which it is necessary for that other to act quickly in order to extricate himself, it is not contributory negligence if that other fails to act in a way which is shown on reflection to have been not the best way out of the difficulty.

Next, counsel for the plaintiff submitted that the learned judge was wrong in law and in fact in deciding that the 2nd defendant was not the agent of the 1st defendant at the time of the accident. It was contended that since the 1st defendant was available and was not called as a witness, and her absence had not been properly accounted for, the learned judge should have invoked the presumption contained in section 114(g) of the Evidence Act, 1950, viz. that evidence which could be and is not produced, would if produced be unfavourable to the person who withholds it.

The facts relevant to this issue are these:

The 2nd defendant said that he bought motor-car No. KA222 but registered it in the name of the 1st defendant, his wife, for convenience. The insurance policy covered both himself and his wife. According to the 2nd defendant, he used the motor-car mostly to visit friends and to send the children to school. On the other hand, the wife would use it for shopping and marketing only.

On the day of the accident, the 2nd defendant said that he used the motor-car to transport his daughter, who was a staff nurse at the new General Hospital, to work. He sent the daughter to work by using the same car every day. The daughter lived with her parents.

Giving his reasons for not invoking the presumption, the learned judge stated that he thought it most unlikely that the wife, if called, would give evidence contradictory to that of her husband on the issue of agency. Therefore, it was not fair for the court to presume that the wife's testimony, if produced, would be unfavourable to the defendant's case.

The law, as I understand it, is this. The owner of a motor-car is liable for the consequences of the negligent driving of that motor-car by one who is his servant. It is unnecessary to consider the master-servant relationship further in this appeal. But the vicarious liability of the owner of a motor-car for the consequences of someone else's negligent driving of the car is not limited to cases where the driver is his servant. The extension of vicarious liability, and the limit of that extension, was explained by du Parcq L.J. in his judgment in *Hewitt* v. *Bonvin*[9] as follows:

> "The driver of a car may not be the owner's servant, and the owner will be nevertheless liable for his negligent driving if it be proved that at the material time he had authority, express or implied, to drive on the owner's behalf. Such liability depends not on ownership, but on the delegation of a task or duty."

It was not without interest that this passage of du Parcq L.J. had been referred to with approval by the Privy Council in *Rambarran* v. *Gurrucharran*[10] and in the recent House of Lords decision in *Launchbury* v. *Morgans*.[11]

In holding that the 2nd defendant was not driving the motor-car as the agent of the 1st defendant, the learned judge said:

> "There was no evidence to show that the husband was driving the care at the wife's request, express or implied, or on her instructions, and was doing so in performance of the task delegated or duty thereby delegated to him by her. Accordingly, I would dismiss the action against the first defendant with costs to be taxed in the lower scale."

The question is whether or not the learned judge was right in coming to this decision.

In *Rambarran's case*, Lord Donovan said:

> "Where no more is known of the facts therefore, than that at the time of an accident the car was owned but not driven by *A* it can be said that *A's* ownership affords some evidence that it was being driven by his servant or agent. But when the facts bearing on the question of service or agency are known, or sufficiently known, then clearly the problem must be decided on the totality of the evidence."

With respect, before this conclusion could be reached, there should be some evidence from the wife to these effects. Here, there was none. There was only the testimony of the husband, 2nd defendant. In my opinion, whether or not the driver was acting as agent of the owner is a question of fact to be decided on the totality of the evidence, viz. the testimonies of both the husband, 2nd defendant, who was the driver and the 1st defendant, the owner.

In my judgment, it was not correct for the learned judge to decide on the question of agency without hearing the owner of the motor-car unless her absence could be properly accounted for. In my opinion, the learned judge was merely speculating when he said that the wife's testimony, if given, would not contradict that of her husband on the issue of agency. Without hearing the wife, it would not be possible to deal with the questions, such as whether the wife did or did not request the husband to drive the car in order to send her daughter to work; whether or not the wife did delegate this task to the husband; whether the journey served any purpose of the wife; whether it was driven for any purpose of the wife or the joint purpose of the husband and wife. Did the husband drive the car on the wife's behalf? In the absence of the evidence of the owner of the car, the learned judge should have ruled that the presumption had not been satisfactorily discharged. Besides, the learned judge had misdirected himself as to the onus of proof when he held that there was no evidence to show that the husband was driving the car at the wife's request, express or implied, or on her instructions, and was doing so in the performance of the task or duty delegated to him by her. In my opinion, the burden of discharging this rested with the wife and not on the plaintiff.

Lastly, it was contended that on the basis of 100 per cent liability, the award of $5,000 as general damages was manifestly inadequate. For the same reason, counsel for the plaintiff submitted that the learned judge was wrong not to allow a claim of $3,705 for loss of earnings, as an item of special damages.

I would deal with this item of special damages of $3,705 first. There is no dispute as to the amount and the question is one of law. It was common ground that from October 6, 1970 till July 20, 1971, the employers, Borneo Biscuit Factory Sdn. Bhd. paid to the plaintiff through his wife the total sum of $3,705. The plaintiff contended that this was an advance and he was supported in this by the secretary of the employers. There was in fact a letter written by the secretary on February 1, 1972 stating that this $3,705 was to be treated as an advance and requesting for a settlement of this (see Ex. P10). There was no evidence to contradict the testimony of the secretary but the learned judge took the view that since the employers took no further step to recover this sum from the plaintiff, the letter was possibly written for the purpose of enabling the plaintiff to recover a bigger award of damages from the defendants. In the absence of bad faith, and the learned judge made no specific finding on this point, in my opinion, the learned judge was wrong to make such an adverse inference which was not justified by the facts. It follows that the sum of $3,705 should form part of the award on special damages. The total amount of special damages awarded should therefore be $6,848. However, following the principle enunciated in *Dennis* v. *London Passenger Transport Board*,[12] it is ordered that $3,705 which was paid by the employers to the plaintiff as advances through his wife shall be paid back to the employers out of the sums recovered from the defendants.

As regards general damages, counsel for the plaintiff submitted that a sum in the region of $10,000 should have been awarded. Now, where the award is that of the judge alone, the appeal is by way of rehearing on damages as on all other issues, but as there is generally so much room for individual choice so that the assessment of damages is more like an exercise of discretion than an ordinary act of decision, the appellate court is particularly slow to reverse the trial judge on a question of the amount of damages. It is difficult to lay down any precise rule which will cover all cases, but a good general guide was given by Greer L.J. in *Flint* v. *Lovell*.[13] In effect, the court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency (see Lord Wright's judgment in *Davies* v. *Powell Duffyrn Associated Collieries Ltd.*[14] at pages 616-617).

Counsel has not been able to show that the learned judge had erred in principle. However, as the sum of $5,000 is within the figure commonly awarded to similar injuries of the lower limb of the leg, I would not disturb this award.

In the result, the judgment of the learned judge is varied as follows:

(a) as regards liability, the judgment is that the 2nd defendant was solely to blame for the accident;

(b) with regard to agency, the judgment is that the 2nd defendant is to be held to be driving the motor-car No. KA222, at the time of accident, as an agent of the 1st defendant;

(c) as regards special damages, the total sum is increased to $6,848 and it is ordered that a sum of $3,705 shall be paid by the plaintiff to his employers, Borneo Biscuit Factory Sdn. Bhd., Kuching, Sarawak, out of the $6,848 recovered from the 1st and 2nd defendants.

To that extent, the appeal is allowed with costs here and below. Costs to be taxed.

Lee Hun Hoe C.J. (Borneo) concurred.

Order accordingly.

Solicitors: *Ee & Lim; Battenberg & Talma.*

SIVAPERUMAL PILLAI v. ABDUL SHUKOR BIN MOHAMED NOH & ORS.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J.) June 21 and September 5, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 171 of 1976]

Bankruptcy — Sale of lands belonging to bankrupt by official assignee — Action for declaration that sale was null and void — Not brought within one year of the sale — Limitation — Bankruptcy Act, 1967, ss. 24(4), 60, 74 and 85(4).

Limitation — Government Proceedings Ordinance 1956 s. 38 — Bankruptcy Act, 1967, s. 74.

In this case the appellant had become a bankrupt and during his bankruptcy three pieces of land were sold by the Official Assignee to the first two respondents. The appellant sued the first two respondents, the Official Assignee and the Government of Malaysia for a declaration that the sales were null and void. The action was brought after the lapse of one year from the sale. The action was struck out as the learned trial judge held it was time-barred under section 74 of the Bankruptcy Act, 1967. The appellant appealed.

Held: dismissing the appeal, the learned trial judge was correct in holding that the action was time-barred.

Cases referred to:-

(1) *Bradford Corporation* v. *Myers* [1916] 1 A.C. 242.

(2) *Government of Malaysia* v. *Lee Hock Ning* [1973] 2 M.L.J. 51.

(3) *Official Assignee* v. *Lian Hong & Ors.* [1964] M.L.J. 422.

(4) *Re Chew Kean Kor* [1957] M.L.J. 34.

(5) *Gibbs* v. *Guild* (1882) 9 Q.B.D. 59, 64.

The following cases were also cited in argument: *Midlands Rly. Co.* v. *Withington Local Board* (1883) 11 Q.B.D. 788; *Firestone Tire & Rubber Co. Ltd.* v. *Singapore Harbour Board* [1952] M.L.J. 145, P.C.; *In re a Debtor* [1949] Ch. 236.